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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

Nos. 195, 196, 197.

UNITED STATES OF AMERICA,
Petitioner,

—against—

BANK OF NEW YORK AND TRUST COMPANY.

UNITED STATES OF AMERICA,
Petitioner,

—against—

PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY.

UNITED STATES OF AMERICA,
Petitioner,

—against—

LOUIS H. PINK.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

AMICUS CURIAE

BRIEF ON BEHALF OF THE NATIONAL CITY BANK OF NEW YORK.

JOSEPH M. PROSKAUER.
Solicitor for The National City Bank of New York.

JOSEPH M. PROSKAUER,
PHILIP A. CARROLL,
OTEY MCCLELLAN,
J. ALVIN VAN BERGH,
Of Counsel.

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The purpose of this brief is to discuss some of the substantive issues raised on these appeals and various allied problems which have and will arise in connec-

tion with Soviet acts and decrees, and especially in the light of Soviet recognition.

The National City Bank of New York has a vital interest in substantive issues which may incidentally be raised on these appeals and in questions cognate thereto.

It believes that it can be of assistance to the court in attempting to state for the court the problems arising from the now historic fact of the Soviet Revolution and pointing out certain vital distinctions sometimes overlooked by the lower courts.

The decision of the precise issues raised by these appeals will, we sincerely hope, be materially simplified by pointing out what is *not* herein involved,—thereby delimiting the field of actual decision.

Questions Not Discussed in This Brief.

We do not discuss certain questions raised by this appeal, because they are covered by the other briefs filed herein, to wit:

(1) Whether a title or possession previously acquired in a judicial proceeding may be divested by subsequent recognition by the executive branch of our government (*cf. Gelston* v. *Hoyt,* 3 Wheat. at 313).

(2) Whether the decrees of the state court in the present cases are still executory; and if so, to what extent;

(3) Whether, under the specific circumstances presented by these records, the United States may bring new suits in the federal court

under Section 24(1) of the Judicial Code to reach so much of the funds under the control of the state court as has not been distributed by final decree, or whether it should not, out of respect for the state court and in view of the dual nature of the judicial system of the United States, seek such relief in the state court in the first instance (*cf. Pennsylvania* v. *Williams,* 294 U. S. 176; *Gordon* v. *Ominsky,* 294 U. S. 186; *Penn General Casualty Co.* v. *Pennsylvania,* 294 U. S. 189).

(4) Whether, and to what extent, the Litvinoff letter operated as an assignment.

Problems Arising From the Russian Revolution.

The Soviet Government, pursuant to its policy of monopolizing all business and acquiring all capital:

(1) Transferred to itself all the capital stock, and cancelled all outstanding shares of stock of certain Russian corporations[1];

(2) "Nationalized" all such Russian corporations; and

(3) Seized the Russian assets of all Russian corporations and of Russian branches of foreign banking and insurance companies, turning such assets over to state institutions, discharging the private companies, and in certain cases giving creditors, in substitution for their former rights against the private companies, certain

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[1] Many of the decrees as to Russian insurance companies are printed in the record.

The pertinent decrees as to Russian banks and the Russian branches of foreign banks have, we believe, been summarized in the text above.

claims against the state institutions, which claims ultimately became worthless by reason of the depreciation of the ruble.[2]

The assets which the state court has been administering, and which the United States now asks the federal court to administer, are assets which are and always have been in America, and are in large part the result of business transacted in the United States with American nationals.

Attention is called to the fact that many of the questions discussed in this brief, and referred to in other briefs, are not presented by the record before the Court.

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[2] Thus, pursuant to the policy of monopolizing the banking business, the two Russian branches of the National City Bank were taken over and all the assets in Russia seized. These branches had been opened under a license which provided that all contracts made with the branches should be governed exclusively by Russian law, and all assets in Russia were to be treated as security for claims arising out of Russian business. At the time of the seizure, the Russian assets of the Russian branches amounted to 241,000,000 rubles and the ruble deposits in said Russian branches were approximately 231,000,000 rubles, both sums exclusive of securities held for safe-keeping. The Russian assets, therefore, exceeded by 10,000,000 rubles the total amount of Russian obligations. The Soviet decrees provided that the assets of such branches should be turned over to the Soviet People's Bank and that creditors of the branches should be credited on accounts in the People's Bank. Later, some of these accounts were in part reduced by a so-called revolutionary tax. Finally, all of the accounts so transferred were cancelled as worthless by reason of depreciation of the ruble.

The situation with respect to Russian branches of foreign insurance companies was very similar. It is fully described in *Dougherty* v. *Equitable Life Assurance Society*, 266 N. Y. 71.

The instant case does not involve the effect of the Russian decrees upon the branches of American corporations domesticated in Russia under Russian laws.

Nor does it involve the effect of the Russian decrees as a defense to actions arising out of contracts made and performable in Russia with such branches domesticated in Russia (*Dougherty* v. *Equitable Life Assurance Society*, 266 N. Y. 71).

It does not even involve the effect of the Russian decrees upon obligations arising out of contracts made and performable in Russia.

Zimmerman v. *Sutherland*, 274 U. S. 253, 256;
Security Savings Bank of California, 263 U. S. 282, 285;
In re Russian Bank of Foreign Trade [1933], 1 Ch. 745, 766;
Restatement of the Conflict of Laws, Sec. 385.

See also:

Williams v. *Brophy*, 96 U. S. 176, 189;
Planters Bank v. *Union Bank*, 16 Wall. 483, 495;
Ware v. *Hylton*, 3 Dallas 568, 582.

Nor does it involve the effect of the Russian decrees upon obligations arising out of contracts made and performable outside of Russia with a Russian corporation (*cf. Canada Southern Ry.* v. *Gebhardt*, 109 U. S. 527, and *Second Russian Insurance Co.* v. *Miller*, 268 U. S. 552).

It involves merely a *problem of administration of "derelict" assets*[3] in the United States of a "nationalized" Russian insurance company.

The field of inquiry in the instant appeals is further delimited by analysis of the nature of the claims which are or may be asserted against these "derelict" assets.

Against the "derelict" funds in the present cases, no claims arising out of business done or contracts made in America are asserted (other than the alleged claims growing out of the administration of the fund itself). The fund has already satisfied all such claims, and no one does or could secure priority over such claims.

The Government's position below was merely that it was entitled to the fund as against former stock holders of the dissolved Russian corporations, and that, as against claims arising out of Russian or other foreign business, it has sufficient interest in the fund to bring it into this court for its administration, postponing until final decree herein any question as to the validity of such claims against the fund.[4]

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[3] A "derelict to be moored while it could be seized lest the tide carry it away" (*Serernoe Securities Co.* v. *L. & L. Ins. Co.*, 255 N. Y. at 123).

[4] The distinction is clearly made in *Issaia* v. *Russo Asiatic Bank* (266 N. Y. 37), where the Court discussed the procedural question as to how New York should administer New York assets of a nationalized Russian bank, but refused to consider as premature whether that plaintiff (asserting rights arising out of a contract made in Russia) might be entitled to share in the fund.

Similarly, in *In re Russian Bank for Foreign Trade* [1933], 1 Ch. 745, the English Court undertook to liquidate English assets of a Russian Bank despite its belief that *strictissimi juris* the petitioning creditor's claim had ceased to exist as a result of Soviet legislation.

No one disputes the power[5] of Russia to confiscate assets situated in Russia and to affect title to deposits localized there, irrespective of the nationality of the plaintiff or defendant.

Ricaud v. *American Metal Co., Ltd.*, 246 U. S. 702;
Oetjen v. *Central Leather Co.*, 246 U. S. 297;
Luther v. *James Sagor & Co.* [1912] 3 K. B. 532;
Salimoff & Co. v. *Standard Oil Co.*, 262 N. Y. 220;
Dougherty v. *Equitable Life Assurance Society*, 266 N. Y. 71[6];
In re Russian Bank for Foreign Trade [1933], 1 Ch. 745, 766;
New York Life Ins. Co. v. *Public Trustee* [1924], 2 Ch. 101.

This question is, however, not involved on the present appeal. We have here deposits unquestionably situated in New York over which the law of the situs has paramount jurisdiction.

Security Savings Bank v. *California*, 263 U. S. 282 at 285;
Rex v. *Lovitt* [1912], A. C. 212, 218, 219;

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[5] Of course, our government through diplomatic channels, may well object to such a confiscation and demand compensation on behalf of its nationals, but the power of a sovereign to confiscate property cannot be questioned in civil litigation.

[6] Reargument, based on the ground that citizens of countries other than Russia were involved, was denied (266 N. Y. 615).

Richardson v. *Richardson* [1927], 43 T. L. R. 631, 633;

Pan American Bank & Trust Co. v. *National City Bank of New York*, 6 Fed. (2d) 762, 767, cert. den. 269 U. S. 554;

New York Life Ins. Co. v. *Public Trustee* [1924], 2 Ch. 101;

Dougherty v. *Equitable Life Assur. Soc.*, 266 N. Y. 71;

Treaty on International Commercial Law of Montevideo, Art. 6 (1889), cited in dissenting opinion below 77 Fed. (2d) at 878.

It may be that, under certain circumstances, the law of the situs may, as a matter of comity, be willing to recognize Russia as the successor of the dissolved Russian corporations but, if so, Russia and the United States, as its assignee, must take the American assets *cum onere*, subject to whatever claims existed against the Russian corporations.

This question, while not involved on the present appeal, will be involved in other cases arising from the Litvinoff letter. Many of these Russian corporations had deposits in banks to which they owed large sums.

It is submitted that anyone claiming these American assets as successor of these corporations must be subject to the same counterclaims as would the corporation itself.

Where the only question involved is the succession of title to local assets, the position of a foreign statutory successor "is no better than that of the dissolved corporation to whose title he has succeeded. * * * He

must submit, as must they, to the mandate of the sovereignty that has the physical control of what he would reduce to his possession" (*Clark* v. *Williard*, 294 U. S. at 214; see also *Disconto Gesellschaft* v. *Umbreit*, 208 U. S. 570; *Sutherland* v. *Selling*, 16 F. [2d] 865, 868).

Conceding the power of the Russian government over assets and business localized in Russia, that power cannot be invoked in an American court so as to defeat the claims of American nationals against such American assets.

If the Soviet acquired any interest in the American assets, it took *cum onere* as to the claims of American nationals against such derelict assets (*United States* v. *The Thekla*, 266 U. S. 328; *State of Russia* v. *National City Bank*, 69 F. [2d] 44; *The Gloria*, 286 Fed. 188, 193-194; *United States* v. *McRae*, L. R. 8 Eq. 69; *Priolean* v. *United States*, L. R. 2 Eq. Cas. 659, 663-664).

The United States, as assignee, could demand no more without transgressing its constitutional powers (See *Henkels* v. *Sutherland*, 271 U. S. at 301, 302).

Respectfully submitted,

JOSEPH M. PROSKAUER,
Solicitor for The National City Bank of New York.

JOSEPH M. PROSKAUER,
PHILIP A. CARROLL,
OTEY MCCLELLAN,
J. ALVIN VAN BERGH,
Of Counsel.